

### **Remarks/Arguments**

Reconsideration of this application in light of the above amendments and the following remarks is requested.

Original claims 1-4 have been canceled, claims 5 and 17 have been amended, new claims 27-30 have been added, and claims 6-16 and 18-26 have been maintained in their original form.

#### Rejections under 35 U.S.C. § 102

##### Claim 5

Claim 5 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,490,632 to Vepa, et al. ("Vepa"). However, MPEP § 2131 requires that in order for a reference to anticipate a claim, each and every element of the claim must be taught. Claim 5 has been amended and the Applicant submits that Vepa does not teach each and every element of claim 5, as amended. Claim 5 is therefore now deemed to be in condition for allowance. Claims 6-10 depend from and further limit claim 5 and therefore are allowable for at least the same reasons.

##### Claim 11

Claim 11 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Vepa. Claim 11 recites in part, "utilizing the first network access technology for executing the active network application; and selecting the second network access technology for continuing the active network application without interrupting the network application through a network access arbitrator by arbitrating between the first network adapter driver and the second network adapter driver for sending the outgoing information and receiving the incoming information."

To support a rejection of claim 11 under 35 U.S.C. § 102(b), MPEP § 2131 requires that the Vepa reference contain each element of the claim. However, the

Examiner cites independent claim 1 and dependent claim 2 of Vepa to reject claim 11 of the present disclosure. Claim 1 of Vepa recites, in part, "a method for selecting a NIC for sending and receiving data packets in an Internet Protocol Exchange (IPX) environment... executing a load balancing scheme to specify a first NIC..." Claim 2 of Vepa recites in part, "automatically switching from said first NIC to a second NIC..." Therefore the cited portion of Vepa does not teach each and every element of claim 11. Accordingly, Applicant submits that the 35 U.S.C. § 102(b) rejection is not supported by the Vepa reference and should be withdrawn. Claims 12-16 depend from and further limit claim 11 and are allowable for at least the same reasons.

Claim 17

Claim 17 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Vepa. Claim 17 has been amended and the Applicant submits that Vepa does not teach each and every element of amended claim 17, as required by MPEP § 2131. Claim 17 is therefore now deemed to be in condition for allowance. Claims 18-22 depend from and further limit claim 17 and therefore are allowable for at least the same reasons.

Claim 23

Claim 23 was rejected under 35 U.S.C. § 102(b) as being anticipated by Vepa. Claim 23 recites, in part, "instructions for determining an active network adapter by monitoring packet traffic and hardware status of one or more network adapters available on the networked hardware platform."

To support a rejection of claim 23 under 35 U.S.C. § 102(b), the Vepa reference must contain all of the elements of the claim. To reject claim 23, the Examiner cites column 12, lines 32-34 of Vepa, which states, "The fault tolerance module monitors the NICs and maintains a list of MAC addresses for NICs that are active," and column 14, lines 22-28 which states, "In step 820, the fault tolerance module in the present embodiment determines whether the incoming data packet is a 'keep-alive' data packet. Data packets are typically sent to determine whether the connection between a client

computer system and the server computer system is still active. Also, data packets may also be sent to and from the various NICs as a means for determining whether a NIC is active." Thus, the cited portion of Vepa does not teach or suggest "instructions for determining an active network adapter by monitoring packet traffic and hardware status of one or more network adapters available on the networked hardware platform," as is required by MPEP § 2131 to sustain the rejection. Accordingly, Applicant submits that the 35 U.S.C. § 102(b) rejection of claim 23 is not supported by the Vepa reference and should be withdrawn. Claims 24-26 depend from and further limit claim 23 and should therefore be allowable for at least the same reasons.

New claims 27-30

New claims 27-30 have been added. Independent claim 27 recites a method for switching between at least first and second network adapters using first and second Open Systems Interconnect 7-Layer (OSI-7) network access technologies, respectively, the method comprising: determining whether the first or second network adapter is an active network adapter in a physical layer (L1) by monitoring a packet traffic and a hardware status of the first and second network adapters; receiving a plurality of data packets from at least one application; and dynamically engaging the active network adapter by a network access arbitrator disposed between a data link layer (L2) and a network layer (L3) to process at least some of the data packets, wherein the engagement of the active network adapter is transparent to the application if the application is disposed in L3 or higher.

The cited references fail to teach or suggest each element of claim 27, as required by MPEP § 2131. Accordingly, claim 27 is allowable over the cited references. Claims 28-30 depend from and further limit independent claim 27, and are allowable for at least the same reason as claim 27.

**Conclusion**

Therefore, it is respectfully submitted that independent claims 5, 11, 17, 23 and 27 are in condition for allowance. Dependent claims 6-10, 12-16, 18-22, 24-26, and 28-30 depend from and further limit their respective independent claims, and are also allowable.

Should the Examiner deem that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the below listed telephone number.

Respectfully submitted,

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